

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

ZYF MARKETING, LLC,  
a Washington limited liability company,  
dba ZipYourFlyer.com,

Plaintiff,

v.

LOYALMOBS INCORPORATED,  
a California corporation dba MondoFlyers;  
PARDNER WYNN, an individual; and  
DAVE MANDELKERN, an individual,

Defendants.

Civil Action No. 2:22-cv-1055

**COMPLAINT**

**JURY DEMAND**

ZYF Marketing, LLC (“ZYF” or “Plaintiff”), brings this Complaint against Loyalmobs Incorporated dba MondoFlyers (“Loyalmobs”), Pardner Wynn, and Dave Mandelkern (collectively, “Defendants”), and in support thereof alleges as follows:

**Introduction**

1. This is a civil action for damages and injunctive relief alleging claims of (a) copyright infringement under the Copyright Act, 17 U.S.C. §§ 100 *et seq.*; (b) violations of the Lanham Act for trademark infringement (15 U.S.C. § 1114); (c) violations of the Lanham Act for false designation of origin, false representation, and false endorsement (15 U.S.C. § 1125(a)(1)(A)); (d) violations of the Lanham Act for false advertising (15 U.S.C. § 1125(a)(1)(B)); (e) unfair and deceptive trade practices arising under RCW 19.86.020; (f) common law trademark infringement; and (g) breach of contract.

**Parties**

2. Plaintiff ZYF Marketing, LLC is a limited liability company organized under the laws of the State of Washington with a principal place of business at 18210 Homeview Drive, Edmonds, Washington, 98026-5550.

3. Defendant Loyalmobs Incorporated dba MondoFlyers is a corporation organized under the laws of the State of California, and, on information and belief, has a principal place of business at 1950 W. Corporate Way, PMB 25320, Anaheim, California, 92801.

4. Defendant Pardner Wynn is an individual residing, on information and belief, in Spokane, WA, with a last known address of 1428 E. 18<sup>th</sup> Ave., Spokane, Washington, 99203. Defendant Wynn is an officer of Loyalmobs.

5. Defendant Dave Mandelkern is an individual residing, on information and belief, in California, with a last known address of 75 Cornelia Drive, Hillsborough, California, 94010. Defendant Mandelkern is an officer of Loyalmobs.

**Jurisdiction and Venue**

6. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because it involves questions of federal copyright law and pursuant to 15 U.S.C. § 1121 because the action alleges violations of the federal Lanham Act.

7. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims at issue in this action because they are so related to the federal law claims as to form part of the same case or controversy, that is, they arise out of a common nucleus of operative facts.

8. This Court has personal jurisdiction over all Defendants because, *inter alia*, Defendants have purposefully and intentionally availed themselves of the privileges of doing business in the State of Washington and, on information and belief, have committed acts of infringement within the State of Washington. On information and belief, Defendants' infringing activities with respect to their mondflyers.com website, as described more fully below, have

1 occurred within the State of Washington, including at least acts of copyright infringement,  
 2 trademark infringement, and false advertising. On information and belief, a substantial portion of  
 3 the creation, development, design, and maintenance of Defendants' infringing mondflyers.com  
 4 website were conducted by Defendants and their employees and agents within Washington State.  
 5 On information and belief, Defendants' customers and potential customers reside in the State of  
 6 Washington, and on information and belief, Defendants actively promote and market their  
 7 services through their infringing mondflyers.com website and through other channels directly to  
 8 individuals in Washington. On information and belief, Defendants are transacting business and  
 9 benefitting financially from the Washington market, including for example selling their services,  
 10 which are advertised through their infringing mondflyers.com website, to real estate agents and  
 11 other customers in the State of Washington. This Court further has personal jurisdiction over  
 12 Defendant Wynn at least because, on information and belief, he is a resident of Washington.

13 9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a) at least  
 14 because, upon information and belief, Defendants have committed acts of infringement in this  
 15 District and regularly conduct business in this District. In addition, a substantial part of the  
 16 events giving rise to this action has occurred, is occurring, and will continue to occur in this  
 17 judicial district, and the harm sustained by Plaintiff has been, is being, and will continue to be  
 18 incurred in this judicial district.

### 19 **Relevant Facts**

#### 20 *A. ZYF, Its Business and Website, and Its Intellectual Property*

21 10. ZYF does business under the name "Zip Your Flyer" and is recognized as the  
 22 nationwide leader in creating and distributing real estate agent email flyers ("E-flyers"). The  
 23 business has been operating in the Seattle area under the direction of Kristen Thornburg since  
 24 2005. In 2014, Ms. Thornburg restructured the business under the current LLC.

25 11. ZYF specializes in creating high-quality E-flyers for showcasing various real  
 26 estate listings and distributing the E-flyers electronically via E-mail and other electronic delivery  
 27 means to real estate agents and other individuals throughout the country.

12. ZYF primarily advertises its products and services through its website at [www.zipyourflyer.com](http://www.zipyourflyer.com) (the “Zipyourflyer.com Website”). ZYF has expended significant time, money, and effort developing an original and creative design for the Zipyourflyer.com Website (the “ZYF Website Design”). For example, the ZYF Website Design includes numerous original elements with respect to at least the colors, text, background, images, graphics, fonts, and/or layouts used in the design, as well as the selection and arrangement thereof.

13. ZYF received a copyright registration for its original design of the Zip Your Flyer Website, which was first published on April 2, 2015. The registration bears Registration No. TX 8-239-494 and an effective date of registration of July 26, 2016. A true and correct copy of the registration is attached hereto as Exhibit A.


14. ZYF includes a copyright notice on the Zipyourflyer.com Website to notify visitors to the site that ZYF’s original design used on the site is protected by copyright.

15. In addition to its copyrights, ZYF also owns trademarks that it uses in connection with its real estate E-flyer business, including on the Zipyourflyer.com Website. These trademarks include the marks ZIP YOUR FLYER, ZIPLYOURFLYER, ZIPLYOURFLYER.COM and the Z logo mark shown below, and variations thereof, (collectively the “ZIP YOUR FLYER Marks”):



16. ZYF is the owner of the following U.S. Trademark Registrations for its marks (the “ZIP YOUR FLYER Registered Marks”). True and correct copies of these registrations are attached hereto at Exhibit B.

Mark	Reg. No.	Reg. Date	Services
ZIPLYOURFLYER.COM	5,007,817	July 26, 2016	Distribution of advertising materials; Design of

			advertising materials for others; Real estate advertising services
	5,021,245	Aug. 16, 2016	Design of advertising materials; Distribution of advertising materials; Real estate advertising services

17. As a result of the continuous and widespread use of the ZIP YOUR FLYER Marks, including the ZIP YOUR FLYER Registered Marks, dating back to at least 2005, ZYF owns valuable goodwill in the marks in connection with the services on which they are used.

18. As part of its business, ZYF offers innovate, business-to-business industry-leading services to its business customers. Among the innovative features of the Zipyourflyer.com Website is a subscription service that allows visitors to the site to subscribe to receive E-Flyers and/or other promotional materials offered by ZYF. The subscription service also provides such E-Flyers and promotional materials through a mobile app developed by ZYF.

19. Subscription to the service is effected through the Zipyourflyer.com Website. In order to do so, subscribers must provide information about themselves, including their name and other contact information. A subscriber also must specify whether he or she is a real estate agent or broker and actively check a box indicating that the subscriber agrees to the terms and conditions governing the use of ZYF's subscription service (the "ZYF Terms and Conditions"). A true and correct copy of the ZYF Terms and Conditions is attached hereto as Exhibit C. The portion of the Zipyourflyer.com Website where users enter this information is shown below:

## Subscribe to Email Flyers and/or Promotions

**Subscribe for FREE.** Subscribe here to receive Real Estate Email Flyers for listings and events in your area. Be the FIRST to know about New Listings, Broker's Opens, Price Changes... and more.

If you change your mind in the future, there is an easy Unsubscribe Link on every flyer we send. (Or you can email [unsubscribe@zipyourflyer.com](mailto:unsubscribe@zipyourflyer.com) and put "Remove" in the Subject Line.)

Want to update an existing subscription or unsubscribe?

\* Required field

Are You An Agent or Broker?  
☐ Yes ☐ No

\* First Name  \* Last Name

\* Brokerage

\* Email

\* Zip Code  \* City

\* State  \* County (not country)


**\* I want to receive**

☒ Email Flyers for Listings in my area  
*Note: If selecting this option, please make sure you complete the fields above for city, county, state and zip code.*

☒ Promotions, Notices and Announcements from Zip Your Flyer

☒ Promotions, Notices and Announcements from Vendors

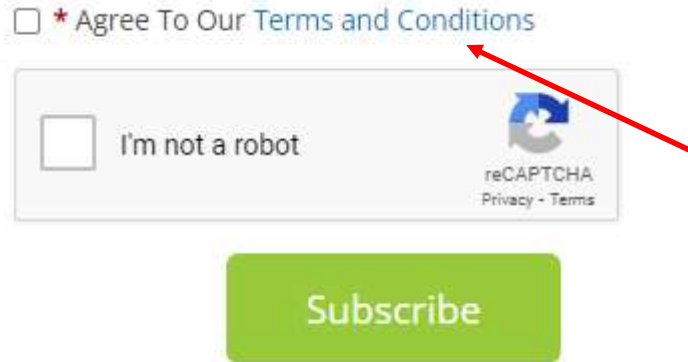
☐ \* Agree To Our Terms and Conditions

☐ I'm not a robot   
reCAPTCHA Privacy - Terms

**Subscribe**

See <https://www.zipyourflyer.com/subscribe/>.

20. Next to the box that a subscriber must check to indicate that they agree to the ZYF Terms and Conditions is a link to the ZYF Terms and Conditions:



See <https://www.zipyourflyer.com/subscribe/>.

21. Included in the ZYF Terms and Conditions is the following provision governing the use of information included on E-Flyers by subscribers to the service:

**Subscribers Agree** that as a subscriber to our service you are not allowed to copy, modify or distribute any information found on an E-flyer for commercial purposes, or contact agent or service provider or use any other contact information found on the E-Flyer for any commercial purpose other than that for which it was intended. The intended purpose of the E-Flyer is specifically to learn more about the listing or service in order to possibly sell that listing as a licensed real estate agent or use the service as was advertised or marketed on the E-Flyer. To protect our customers, using the contact information provided on an E-Flyer for any other commercial purpose is considered a violation of our Terms of Service and our [Privacy Policy](#) and can be subject to litigation and damages of up to \$20,000 per violation.

See <https://www.zipyourflyer.com/terms-and-conditions/>.

*B. Loyalmobs' Infringing and Wrongful Acts*

22. Loyalmobs, under the direction of and in concert with at least its officers Defendants Wynn and Mandelkern, directly competes with ZYF in the real estate E-flyer industry, under the name "Mondoflyers," and operates a website at [www.mondoflyers.com](http://www.mondoflyers.com) (the "Mondoflyers Website") where it promotes and sells its competing services.

23. The Mondoflyers Website has been used and operated by Defendants in connection with Loyalmobs' real estate E-Flyers business for at least the past several years.

24. Since at least as early as 2018, multiple iterations of the Mondoflyers Website have included design elements copied from the Zipyourflyer.com Website, including the copyrighted ZYF Website Design.



1           25.     ZYF has not authorized such copying by Defendants of ZYF's Zipyourflyer.com  
2 Website and use of ZYF's copyrightable works, including the ZYF Website Design.

3           26.     For example, on information and belief, in or around early 2022, Defendants  
4 created and operated a version of the Mondoflyers Website that copied, without authorization,  
5 multiple aspects of the Zipyourflyer.com Website and ZYF Website Design, including without  
6 limitation elements relating to the colors, text, background, images, graphics, fonts, and layouts  
7 used in the design, as well as the selection and arrangement of such elements.

8           27.     On the Mondoflyers Website, Defendants have used and continue to repeatedly  
9 use the ZIP YOUR FLYER Marks, including the ZIP YOUR FLYER Registered Marks, or other  
10 marks confusingly similar thereto, in connection with the promotion and sale of Defendants'  
11 competing services.

12           28.     ZYF has not authorized such use by Defendants of the ZIP YOUR FLYER  
13 Marks, including the ZIP YOUR FLYER Registered Marks, or other marks confusingly similar  
14 thereto.

15           29.     For example, at various times throughout the existence of the Mondoflyers  
16 Website, including the current version of the site, at least 15 various pages of the Mondoflyers  
17 Website have featured at least one unauthorized use of the ZIP YOUR FLYER Marks, including  
18 the ZIP YOUR FLYER Registered Marks. In total, the Mondoflyers Website includes dozens of  
19 unauthorized uses of the Marks, which are likely to confuse consumers at least with respect to  
20 the source and sponsorship of the Mondoflyers Website and the services promoted and sold on  
21 the site.

22           30.     As part of their promotional efforts, Defendants also include numerous statements  
23 about ZYF and its services on the Mondoflyers Website. A substantial number of these  
24 statements are false, deceptive, and misleading. Defendants similarly include on their website  
25 statements comparing ZYF and ZYF's services to Defendants and Defendants' services that  
26 include false, deceptive, and misleading information about ZYF and ZYF's services and  
27 Defendants and Defendants' services.



1           31. For example, Defendants make and have made statements on the Mondoflyers  
2 Website that include false, deceptive and misleading claims concerning ZYF's customer support  
3 availability, its provision of same-day turnaround service, its agent list size, and its targeted  
4 delivery capabilities, among other aspects of ZYF's business. Many of these claims include false,  
5 deceptive, and misleading comparisons to Defendants' own business.

6           32. On information and belief, such false, deceptive, and misleading statements  
7 materially deceive and/or have a tendency to materially deceive consumers throughout the  
8 country in a way that drives business away from ZYF and harms ZYF's business and reputation.

9           33. On information and belief, Defendants' promotional activities also include  
10 sending emails to customers and potential customers, including to customers of ZYF.

11           34. Customers of ZYF have forwarded such emails to ZYF, including emails from  
12 Defendants that use and refer to information obtained, on information and belief, directly from  
13 ZYF's subscription service. On information and belief, the emails sent by Defendants to ZYF  
14 customers expressly and impliedly refer to ZYF and its business, including unauthorized uses of  
15 the ZIP YOUR FLYER Marks and the ZIP YOUR FLYER Registered Marks, and to the services  
16 allegedly provided by ZYF to the customer. In forwarding such emails from Defendants to ZYF,  
17 the ZYF customers have expressed apparent confusion as to whether any relationship exists  
18 between ZYF and Defendants and confusion as to how Defendants obtained the ZYF customer's  
19 contact information and knew to reach out to them.

20           35. On information and belief, Defendants obtain information regarding such ZYF  
21 customers directly through the ZYF subscription service. On information and belief, Defendants  
22 have subscribed to the service, including agreeing to the ZYF Terms and Conditions, solely for  
23 the purpose of obtaining such information regarding ZYF customers. For example, on  
24 information and belief, certain ZYF customers have received such emails from Defendants  
25 immediately after receiving an E-Flyer or other promotional materials from ZYF's subscription  
26 service, indicating that the Defendants also received the same E-Flyer or other promotional  
27

1 material through the subscription service and then immediately used information on it to send out  
2 emails promoting Defendants' competing services to the ZYF customers.

3 36. Such activities by Defendants constitute use of information from ZYF's  
4 subscription service for unauthorized commercial purposes, in violation of the ZYF Terms and  
5 Conditions. On information and belief, Defendants continue to use and will continue to use in the  
6 future information Defendants obtain directly from ZYF's subscription service for unauthorized  
7 commercial purposes, in violation of the ZYF Terms and Conditions.

8 C. ZYF's Enforcement Efforts

9 37. Because of Defendants infringing and wrongful activities, including those alleged  
10 above, ZYF has attempted to stop Defendants from using ZYF's copyrights and trademarks  
11 without ZYF's authorization, including through communications requesting that Defendants' to  
12 cease their activities.

13 38. At least as early as 2018, Defendants have been on notice that ZYF considers  
14 Defendants' uses of ZYF's intellectual property to constitute infringement and have been aware  
15 of ZYF's demands for Defendants to cease their infringing and wrongful activities.

16 39. Despite ZYF's efforts to enforce its rights, Defendants have not ceased their  
17 infringing and wrongful activities and, on information and belief, will continue such activities in  
18 the future.

19 **COUNT I (All Defendants):**  
20 **Copyright Infringement (17 U.S.C. § 501)**

21 40. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth  
22 herein.

23 41. ZYF's website design contains copyrightable subject matter under the Copyright  
24 Act of 1976, 17 U.S.C. §§ 100 *et seq.*

25 42. ZYF has complied in all respects with the provisions of the Copyright Act by  
26 registering for copyright protection for the ZYF Website Design. *See* Exhibit A.  
27

1           43.     ZYF is the owner of all rights, title, and interest in and to the copyright in the  
2 ZYF Website Design.

3           44.     Defendants had access to ZYF's Website Design and, on information and belief,  
4 at various times have viewed and accessed the creative and original content contained in the ZYF  
5 Website Design at [www.zipyourflyer.com](http://www.zipyourflyer.com).

6           45.     Defendants engaged in copyright infringement by copying the ZYF Website  
7 Design, creating derivative works of the ZYF Website Design, distributing copies of the ZYF  
8 Website Design to the public, or by displaying the ZYF Website Design publicly. For example,  
9 various iterations of Defendants' Mondoflyers Website include or have included copyrighted  
10 elements of the ZYF Website Design without ZYF's authorization, including at least with respect  
11 to original and creative elements embodied in one or more of the colors, text, background,  
12 images, graphics, fonts, and layouts of the ZYF Website Design, as well as the selection and  
13 arrangement thereof.

14           46.     By and through their actions alleged above, Defendants have infringed and will  
15 continue to infringe ZYF's registered copyrights in the ZYF Website Design by, *inter alia*,  
16 copying, creating derivative works, distributing copies, and publicly displaying infringing  
17 materials on the Mondoflyers Website, which website is and has been substantially similar to and  
18 derived from the ZYF Website Design, without authorization or permission from ZYF.  
19 Defendants have therefore violated at least ZYF's exclusive rights under 17 U.S.C. § 106.

20           47.     On information and belief, Defendants' infringement of ZYF's copyright has been  
21 deliberate, willful, and in complete disregard of ZYF's rights.

22           48.     Defendants have realized unjust profits, gains, and advantages as a result of their  
23 infringement and will continue to do so as long as Defendants' infringement of ZYF copyrights  
24 is permitted to continue.

25           49.     As a result of Defendants' willful copyright infringement, ZYF has suffered, and  
26 will continue to suffer actual damages. ZYF is entitled to its actual damages, and any profits,  
27 gains, and advantages obtained by Defendants as a result of their willful acts of infringement and

1 their use and publication of ZYF's copyrighted material, pursuant to 17 U.S.C. § 504(b).

2 Alternatively, ZYF is entitled to recover statutory damages for Defendants' willful acts of  
3 infringement, pursuant to 17 U.S.C. § 504(c).

4 50. ZYF has suffered and will continue to suffer, as a result of Defendants' willful  
5 copyright infringement, irreparable and repeated injury. It is, at present, difficult to determine the  
6 amount of damages that would provide adequate relief at law for Defendants' acts. ZYF's  
7 remedies at law are not, alone, adequate to compensate ZYF for the injuries already inflicted and  
8 further threatened by Defendants.

9  
10 **COUNT II (All Defendants):**  
**Federal Trademark Infringement (15 U.S.C. § 1114)**

11 51. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth  
12 herein.

13 52. The actions of Defendants, as alleged above, constitute the unauthorized use in  
14 commerce of reproductions, counterfeits, copies or colorable imitations of ZYF's registered ZIP  
15 YOUR FLYER Registered Marks in connection with the sale, offering for sale, distributing or  
16 advertising of goods or services, on or in connection with which such use is likely to cause  
17 consumer confusion, deception or mistake as to source, sponsorship or approval of Defendants'  
18 goods or services in violation of 15 U.S.C. § 1114.

19 53. Defendants' actions in infringing ZYF's ZIP YOUR FLYER Registered Marks  
20 have been and continue to be willful as Defendants are and have been on actual notice of their  
21 lack of authorization to use the marks since at least as early as 2018.

22 54. ZYF has suffered actual damages and other damages as a result of Defendants'  
23 infringement.

24 55. Defendants' actions in infringing ZYF's ZIP YOUR FLYER Registered Marks  
25 have caused and will continue to cause ZYF to sustain damage, loss and injury, in an amount that  
26 cannot be fully measured or compensated in economic terms. The actions of Defendants have  
27

1 damaged and will continue to damage, the business, market, reputation, and goodwill of ZYF,  
2 and may discourage current and potential customers from dealing with ZYF.

3 56. Defendants' actions in infringing ZYF's ZIP YOUR FLYER Registered Marks  
4 have caused and will continue to cause ZYF to sustain irreparable damage, loss, and injury for  
5 which ZYF has no adequate remedy at law.

6 **COUNT III (All Defendants):**  
7 **False Designation of Origin (15 U.S.C. § 1125(a)(1)(A))**

8 57. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth  
9 herein.

10 58. Defendants' unauthorized use of the ZIP YOUR FLYER Marks in connection  
11 with its goods and services is likely to cause confusion, or to cause mistake, or to deceive as to  
12 the affiliation, connection, or association of Defendants with ZYF or as to the origin,  
13 sponsorship, or approval of Defendants' goods and services by ZYF in violation of 15 U.S.C. §  
14 1125(a)(1)(A).

15 59. Defendants' actions in infringing ZYF's ZIP YOUR FLYER Marks have been  
16 and continue to be willful as Defendant are and have been on actual notice of their lack of  
17 authorization to use the Marks since at least as early as 2018.

18 60. ZYF has suffered actual damages and other damages as a result of Defendants'  
19 infringement.

20 61. Defendants' actions in violation of Section 1125(a)(1)(A) have caused and will  
21 continue to cause ZYF to sustain damage, loss, and injury in an amount that cannot be fully  
22 measured or compensated in economic terms. The actions of Defendants have damaged and will  
23 continue to damage the business, market, reputation, and goodwill of ZYF, and may discourage  
24 current and potential customers from dealing with ZYF.

25 62. Defendants' actions in violation of Section 1125(a)(1)(A) will continue to cause  
26 ZYF to sustain irreparable damage, loss, and injury for which ZYF has no adequate remedy at  
27 law.

**COUNT IV (All Defendants):**  
**False Advertising (15 U.S.C. § 1125(a)(1)(B))**

63. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

64. Defendants have made false and misleading statements of fact about ZYF and its goods and services and/or about Defendants' services relative to ZYF's services. Those statements misrepresent the nature, characteristics, and qualities of ZYF's goods and services and are expressly false, impliedly false, or both.

65. Defendants knew or should have known that their advertising activities were false, misleading, and deceptive.

66. On information and belief, Defendants' false and misleading statements have deceived and have a tendency to deceive a substantial segment of their intended audience about matters material to purchasing decisions. Defendants' violations have caused harm to the public and, unless restrained, will further damage the public.

67. ZYF's goods and services are offered in interstate commerce. Similarly, Defendants' false and misleading statements were and are made in commercial advertising and promotion in interstate commerce.

68. Defendants' violations have proximately harmed ZYF. As a result of Defendants' violations, ZYF has suffered and will continue to suffer damage to its business and goodwill. On information and belief, ZYF has and will lose sales and profits and incur increased advertising and marketing costs.

69. ZYF's immediate, ongoing, and irreparable injuries caused by Defendants' violations have no adequate remedy at law, and ZYF is therefore entitled to injunctive relief.

**COUNT V (All Defendants):**  
**Unfair and Deceptive Trade Practices Under State Law (RCW 19.86.020)**

70. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

71. Defendants' acts as alleged herein constitute unfair and deceptive trade practices under the common law and statutory laws of the State of Washington, including, but not limited to RCW 19.86.020, and the laws of other states in which Defendants' goods and services are advertised or provided.

72. Defendants' acts as alleged herein are repetitive, falsely and deceptively create the impression that Defendants' goods and services are associated with, sponsored by, or approved by ZYF, and are likely to confuse the public as to the source of Defendants' goods and services.

73. Defendants' acts as alleged herein affect the public interest as a result of the likely public confusion caused by such acts.

74. Defendants' acts as alleged herein have caused and will continue to cause injury to ZYF in its business and/or property. ZYF's rights in the Zip Your Flyer Marks have been infringed, its goodwill has been undermined, and it has been forced to expend substantial attorneys' fees and time addressing and undoing such harm, including in this proceeding.

**COUNT VI (All Defendants):**  
**Common Law Trademark Infringement**

75. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

76. Defendants' actions as alleged above constitute common law trademark infringement. The ZIP YOUR FLYER Marks are valid and enforceable trademarks that serve to communicate to consumers that the goods and services with which they are used come from a single source.

77. Defendants' unauthorized use of the ZIP YOUR FLYER Marks in connection with its competing goods and services is likely to deceive the public in that it misleads members of the public into believing that Defendants' goods and services come from ZYF (or that ZYF's goods and services come from Defendants) or that there is an affiliation between ZYF and Defendants or between their respective goods and services or that ZYF endorses or sponsors or



1 has granted a license for Defendants' goods and services or that Defendants endorse or sponsor  
2 or have granted a license for ZYF goods and services.

3 78. As a result of Defendants' infringement of the ZIP YOUR FLYER Marks, ZYF  
4 has suffered and will continue to suffer economic losses in an amount to be proven at trial and  
5 other harm to the goodwill represented by the ZIP YOUR FLYER Marks in an amount that  
6 cannot be fully measured or adequately compensated in economic terms.

7 **COUNT VII (All Defendants):**  
8 **Breach of Contract**

9 79. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth  
10 herein.

11 80. The ZYF Terms and Conditions constitute a valid contract supported by  
12 consideration under the laws of the State of Washington.

13 81. Defendants materially breached the agreement at least by using information  
14 obtained from ZYF and/or one or more of its E-flyers for commercial purposes other than that  
15 for which the information was intended, which is expressly prohibited by the ZYF Terms and  
16 Conditions.

17 82. ZYF has suffered damages as a result of Defendants' breaches in an amount to be  
18 calculated at trial.

19 **DEMAND FOR RELIEF**

20 WHEREFORE, Plaintiff requests that the Court enter a judgment in its favor and against  
21 Defendants as follows:

- 22 a. Judgment that Defendants have committed acts of copyright infringement under  
23 Title 17 in violation of the Copyright Act, including 17 U.S.C. § 501;  
24 b. Damages to ZYF and profits of Defendants pursuant to 17 U.S.C. § 504 or  
25 statutory damages under 17 U.S.C. § 504 for the infringement of ZYF's  
26 copyrights;  
27

- c. A permanent injunction enjoining Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, from continuing to copy, modify, or otherwise use and infringe ZYF's copyrighted material;
- d. Reasonable attorneys' fees pursuant to 17 U.S.C. § 505;
- e. Judgment that Defendants have used ZYF's federally registered trademarks or marks confusingly similar thereto without authorization in violation of 15 U.S.C. § 1114;
- f. Judgment that Defendants have used ZYF's trademarks or marks confusingly similar thereto without authorization in violation of 15 U.S.C. § 1125(a)(1)(A).
- g. Judgment that Defendants have committed acts of false advertising in violation of 15 U.S.C. § 1125(a)(1)(B);
- h. An award of all of Defendants' profits attributable to their infringement of ZYF's trademarks and their acts of false advertising, in an amount to be determined at trial, and that such amount be trebled;
- i. An award of all actual damages caused by Defendants' infringement of ZYF's trademarks and by Defendants' acts of false advertising, in an amount to be determined at trial, and that such amount be trebled;
- j. A declaration that this case is exceptional under 15 U.S.C. § 1117, and that Plaintiff be awarded reasonable attorneys' fees and costs;
- k. Judgment that Defendants have violated RCW 19.86.020 and an award of damages for such violations in an amount to be determined at trial, including at least actual damages pursuant to 19.86.090, and that such damages be trebled, and an assessment of civil penalties pursuant to 19.86.140;
- l. Judgment that Defendants have used ZYF's trademarks or marks confusingly similar thereto without authorization in violation of ZYF's common law rights;

- m. A permanent injunction enjoining Defendants and their officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, from continuing to infringe ZYF's trademarks and from continuing to commit acts of false advertising;
- n. Judgment that Defendants have breached the ZYF Terms and Conditions in violation of Washington law and an award of compensatory damages for such breach in an amount to be determined at trial;
- o. Attorneys' fees and costs pursuant to federal and Washington law;
- p. Pre-judgment and post-judgment interest; and
- q. Such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38 and LCR 38, Plaintiff hereby demands a trial by jury for all issues so triable.

DATED this 29th day of July 2022.

Respectfully submitted:

/s/E. Russell Tarleton  
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